IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10122 of 1996

GUJARA ARGO INDUSTRIES CORPN LTD.

Versus

RACHEL PHILIP

Appearance:

MS PJ DAVAWALA for Petitioner

MR DA JOSHI for Respondent

CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 20/12/96 &

22.01.97

ORAL ORDER

What is the correct application, interpretation and proper mode of implementation of the Policy of Higher Grade Scale Scheme pursuant to Office Order dated 14.9.1992, adopting a Government Resolution for the employee who have no promotional avenues in Corporation after the completion of 9, 18 and 27 years of service which is hereinafter referred to a "HGS Scheme".

In order to appreciate the aforesaid controversy , a few material facts giving birth to the present petition may, shortly, be narrated at the outset.

The petitioner is a public corporation under the Government of Gujarat and it is a public sector undertaking. The respondent herein is an employee-workman of the petitioner corporation working as steno-grade II in the chemical division of the petitioner corporation.

The respondent joined the services of the petitioner on 27.3.1975 as a stenotypist and later on, on 12.10.1984, she came to be appointed as steno,grade II, on regular pay sale of Rs. 475-800 which had been revised to Rs. 1600-2660 plus other allowances. The petitioner introduced a policy of Higher Grade Scale Scheme by its order dated 14.9.1992 as referred to above for its employees who were not having promotional avenues.

The petitioner later on as per office order dated 1.9.1995 revised the HGS Scheme which is to the effect that if on a particular post, no promotion avenues are available there and the employees opt for the said scheme, then such employees would be entitled to next higher grade scale on completion of 9 years, 18 years and 27 years as the case may be subject to fulfillment of other conditions. For the purpose of adopting this scheme, the cut off date given by the petitioner Corporation was 1.6.1987 for those employees who have completed the eligibility period prior to 1.6.1987.

The respondent had opted for the said scheme, on 17.8.1993, in the prescribed form and along with that option,she had also forwarded a letter to the petitioner .The respondent had intimated in the said option form that the scheme may be made effective from 1.11.1993. According to the case of the petitioner, the said date was not accepted by the petitioner as there was no option to the employee to select any particular date for making the said scheme effective.

The petitioner thereafter had fixed basic pay of the respondent in HGS as per the scheme. It is further contended by the petitioner that format for pay fixation adopted by it is in terms of the office order for introduction of HGS Scheme and as stipulated in the service rules of the Corporation. The petitioner-corporation also placed reliance on service rule 32 which relates to refixation of pay on promotion.

The respondent contended that she was entitled to benefit of said HGS Scheme as she completed 9 years in one pay scale and,therefore, resultant suitable refixation in higher grade was required to be done. Since it was not correctly done,she filed recovery application under Section 33-C(2) of the Industrial Disputes Act, 1947 ('ID Act') .

According to the case of the respondent, she is entitled to get her basic pay at Rs. 2,120/- per month from 12.10.1993 on completion of 9 years service in the same scale as against Rs. 2,020/- per month as was offered to be paid to her. With the increase in basic pay to Rs. 2,120/-, she claimed to get difference of increase in DA at Rs. 64.40 rounded up at Rs. 64/- along with other local allowances. It was, therefore, the case of the respondent - employee before the Labour court that she was entitled to a sum of Rs.134/being total of Rs. 70/+ 64/- per month with effect from 12.10.1993 and onwards.

The respondent had claimed a total sum of Rs. 1175/- at the rate of Rs. 134/- per month till 30.6.1994. According to her case, she was entitled to the said benefit for a further period of 9 years from 12.10.1993.

There is no dispute about the fact that the Government of Gujarat vide their Resolution No. AOP-1091/3/M, Finance Department dated 5.7.1991 announced the scheme of HGS to deal with the problem of stagnation or restricted chances of promotions to Government employees. There is a purpose and policy behind the said scheme. The employees who have not been able to get promotion and resultant benefit of HGS Scheme on account of variety of reasons would have a feeling of frustration and probably it may tell upon working and efficiency of the employees. With a view to obviating such situation, the Government announced the HGS Scheme so that an employee who has not been able to get higher grade or scale on the ladder of promotion could get such scale even without promotion as such. This scheme came to be adopted by the petitioner Corporation by its resolution No.173/16 in 173rd meeting of the Board of Directors held on 17.9.1992 as a result of which the Corporation had issued office order by which the said scheme was introduced by petitioner. It is in this context that employees of the petitioner were instructed to submit undertaking in case the employees opt to accept the said scheme. Thus, it becomes clear that it was optional.

As per the HGS Scheme, the employees who are not given any promotion since 9 years, 18 years and lastly 27 years, are to be given HGS as against their existing pay scale. In short,the purport and design of the aforesaid scheme is to provide HGS to the employees on the basis of the existing pay scale, who have been without promotion since last 9, 18 and 27 years.

The respondent had completed 9 years service in the same pay scale. Therefore, it was her case that she was entitled to get suitable pay fixation in HGS Scheme prescribed by the Government and adopted by the petitioner-Corporation.

For the purpose of adopting the scheme, the cut off date given by the Corporation was 1.6.87 for those employees who had completed the eligibility period prior to 1.6.87. The respondent - employee opted for the said scheme on 17.8.1993 in the prescribed format. She opted w.e.f. 1.11.1993. However, the petitioner Corporation did not permit the petitioner to opt from 1.11.1993 and instead granted from 12.10.1993. The petitioner Corporation

granted the benefit but not as per the calculations and versions of the respondent. In other words, while fixing the higher grade scale on completion of nine years, the petitioner authority did not take into account and add the amount of normal and regular increment which fell due from 1.10.1993 in fixing her basic salary at Rs.2060/- with one notional increment of Rs. 50/- in the existing scale of Rs. 1600-50-2300 EB 60-2660 for higher grade scale of Rs. 2000-3500 from the existing pay scale of Rs. 1600 2660.

The respondent - employee being dissatisfied with the fixation of the basic pay at Rs. 2060/- instead of Rs. 2120/-, preferred Recovery Application before the Labour Court, Ahmedabad, being Recovery Application No. 1376 of 1994, inter alia, contending that her basic pay for the purpose of fixation in the next higher grade stage w.e.f. 12.10.1993 should have been fixed at Rs. 2,120/- per month and not at Rs.2060/- only. Considering regular increment of Rs.60/- which fell on 1.10.1993 in existing pay scale over and above the notional increment. The respondent employee therefore claimed Rs.134/- per month more from 12th October, 1993.

The petitioner - Corporation oppossed this Recovery Application by filing written reply and, inter alia, contending before the Labour Court that on 12th October, 1993, respondent was entering tenth year of her service and HGS Scheme is applicable on completion of nine years of service. Therefore, her basic salary in existing Pay scale on 11.10.1993 was required to be considered without considering regular increment of Rs. 60/- which fell due on 1.10.1993 for fixation of basic pay under the HGS Scheme which was only at Rs. 2000/- and not Rs. 2,060/-.

The Labour Court after considering the facts and circumstances and hearing the parties accepted the contention of the respondent and held that the respondent is entitled to an amount of Rs.1175/at the rate of Rs. 134 per month for the period from 12.10.1993 to 30.6.1994 on the basic pay of Rs.2120/- in the next higher grade. In view of the fact that the basic pay as on 1.10.1993 of the respondent as per pay slip was Rs. 2060/-. Thus, the Labour Court found that she is entitled to the higher grade scale on completion of her nine years service on the basic pay of Rs. 2,120/-. Hence, this petition at the instance of the petitioner Corporation.

The learned Counsel Mr. Raval has firstly contended that the respondent was not entitled to the basic pay of Rs.

2,120/- pursuant to the HGS Scheme as held by the Labour Court. He also submitted that the Labour Court had no jurisdiction to decide the disputed question with regard to the benefit of HGS Scheme exercising powers under Section33-C(2) of the I.D. Act and that respondent was not entitled to any relief under the said provision. The submission raised by Mr. Raval is countenanced and controverted by the learned Counsel Mr. D.A. Joshi for the respondent - employee.

In view of the impugned order recorded by the Labour Court in exercising its powers under Section 33-C(2) of the I.D. Act, the contention raised by the learned Advocate Mr. Raval, is required to be rejected firstly on the ground that such a contention was not, specifically, raised before the Labour Court. Ordinarily, a new plea in a writ petition cannot be permitted to be raised. It could not be said to be a pure question of law. Therefore, on this count, the said contention is required to be rejected.

Alternatively, even if such a plea is allowed to be raised, then also, it cannot be accepted in view of the facts and circumstances and the plain tenor of the provision of Section 33-C(2) of the I.,D. Act. Section 33-C(2) provides additional powers. It, as such, does not create any jurisdiction in the court or a tribunal concerned. It empowers very important right on aggrieved workman to collect any money due or to have value of benefit to which one is eligible, computed in terms of money to recover it from the reluctant employer. It is designedly provided by the legislature in its wisdom. There is a purpose and design behind it. The Section 33-C(2) reads as under :

> 33-C(2): Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government [within a period not exceeding three months]:
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> [Provided that where the presiding officer of a Labour Court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing, extend such period by such further

period as he may think fit.]

It can very well be seen from the aforesaid provision that the said machinery is provided for recovery of the money due not only under the cases specified in sub-section (1), but any other claim for money due in any other provisions. It acts like an executing court and, therefore, it has power to examine and consider incidental aspects wherever and whenever the entitlement is not in controversy, the Labour Court has power to grant relief under Section 33-C(2).

The contention that there is a controversy and dispute between the petitioner and the respondent employee with regard to the interpretation and, therefore, straight way recovery application is not competent. It is thus submitted that there should be an adjudication by the competent Labour Court first and no resort to the provisions of Section 33-C(2) for recovery of money due is competent. This submission, prima facie may appear to be subtle but not sustainable. The controversy is not with regard to the entitlement which flows from the HGS Scheme which is introduced by the petitioner Corporation since 14.9.1992 in respect of the persons who are not having or limited promotional avenues. The same scheme was also approved by the Board of Directors. The respondent employee opted for the said Scheme and according to the case of the petitioner - Corporation itself, she is entitled to the said Scheme w.e.f. 12.10.1993 but the Corporation's contention is that the regular increment which falls due from the first of the month and which is already granted and accordingly pay slip is issued, cannot be considered for the limited purpose of fixation of basic pay in the next higher grade scale. Is there any dispute about entitlement? The dispute revolves round the mode and manner of computation or calculation of fixing basic pay in the next higher scale and not the entitlement itself. Once the entitlement is not in question, the Labour Court under Section 33-C(2) would be obviously competent to grant relief and will have jurisdiction and is competent to grant appropriate relief. Thus, the contention that provision of Section 33-C(2) cannot be invoked by the respondent as the Labour Court has no jurisdiction for passing order for recovery in absence of adjudication of the claim is absolutely meritless. Therefore on both counts - factually and legally, this contention is required to be thrown overboard while confirming the impugned order and award of the Labour Court.

It would be now appropriate to deal with the relevant

case laws and the decisions relied on by both the sides.

In MUNICIPAL CORPORATION OF DELHI v. GANESH RAZAK, reported in (1995) 1 SCC 235, the Apex Court has while interpreting the provision of Section 33-C(2) clearly held that where the very basis of the claim or the entitlement of the workmen to a certain benefit is disputed, there being no earlier adjudication or recognition thereof by the employer, the dispute relating to entitlement is not incidental to the benefit claimed and, therefore, clearly outside the scope of a proceeding under Section 33-C(2) of the Act. The Labour Court has no jurisdiction to first decide the workmen's entitlement and then proceed to compute the benefit so adjudicated on that basis in exercise of its power under Section 33-C(2) of the Act. Relying on this decision it is contended that the respondent employee has no right, and Labour Court has no jurisdiction to grant relief. In fact, Mr. Raval is not in a position to make any slice of the profit out of the said decision as in that case the very basis or the foundation of the entitlement was in controversy whereas in the present case the entitlement to the benefit of the Scheme is not in dispute. On a repeated pointed question, learned Counsel Mr. Raval could not offer any clear answer as to whether the controversy revolves round the entitlement or the computation or the interpretation. However, it was admitted that right of respondent employee to claim the benefit of HGS Scheme is not in dispute as the said scheme is adopted by the petitioner Corporation and is opted by her. So, recognition with regard to the entitlement is no longer in dispute. What is in dispute precisely is whether the amount of regular increment falling due on the first of the month could be added or should be added or not while determining the basic pay in the next higher grade which will be applicable w.e.f. 12th of October, 1993 though the respondent employee is entitled to regular increment of Rs.60/- and she is given that amount from 1st of October, 1993 and accordingly the pay slip is also issued. However, for the purpose of fixing of the basic pay in the next higher grade only notional increment and not the regular increment amount could be considered or added, is the stand taken by the petitioner - Corporation without any nexus, rationale or philosophy vis-a-vis the HGS Scheme.

The main object and underlying design of the HGS Scheme is to mitigate a sense of resentments and frustrations arising at times amongst the employees for want of or limited promotional avenues or for other reasons will be frustrated if the regular increment amount is not taken

into consideration while fixing the basic pay for the next higher grade scale. Therefore, the contention that the calculation made by the Labour Court in the impugned award is unjust and illegal is not acceptable and sustainable.

Reliance is also placed on a decision of the constitutional Bench of the Apex Court in the case of THE CENTRAL BANK OF INDIA LTD v. P.S. RAJAGOPALAN, reported in 1964 SC 748 by the learned Counsel Mr. Joshi for the respondent employee. In this case, the scope and interpretation of the provisions of Section 33-C(2) of the I.D. Act has been clearly expounded. It is held by the Bench of five Hon'ble Judges of the Apex Court for the purpose of making the necessary determination under Section 33-C(2), it would, in appropriate cases, be open to the Labour Court to interpret the award or settlement on which the workman's right rests. When the Labour Court is given power to allow an individual workman to execute or implement his existing individual rights, it is virtually exercising execution powers in some cases, and it is well settled that it is open to the Executing Court to interpret the decree for the purpose of execution. It is, of course, true that the executing Court cannot go behind the decree, nor can it add to or subtract from the provision of the decree. It is further held that under Section 33-C(2), even when right to benefit is disputed by the employer, the Labour Court has jurisdiction to determine whether the workman has right to resume benefit. For that purpose also, Labour Court can interpret the award or settlement on which a workman bases his claim.

It becomes very clear that once entitlement is established or where there is preexisting right which may be flowing from award, settlement, statutory provision or from any other source and once it is established or is recognised,action lies under Sec. 33-C(2). This incidental computation or relevant interpretation can be made by the Labour Court for the purposes of deciding the claim of the employee. In the instant case, the recognition of monetary benefit of the respondent employee under the HGS Scheme is not at all in controversy. On the contrary, the right to claim benefit under HGS Scheme is recognised. Thus, there is a preexisting right, what is required to be adjudicated upon and resolved is not the dispute for entitlement raised by the petitioner Corporation. But the dispute revolves round the mode and manner of computation or calculation of fixing basic pay in the next higher grade scale and how this benefit should be calculated.

Should there be an addition of the amount of the regular increment along with the notional increment so as to fix the basic pay for her in the next higher grade scale is a short point in dispute, which in reality, found to be not at all a dispute but, interpretation wrongly formulated and propounded by the petitioner Corporation without any rationale or purpose. So, dispute is not with regard to the entitlement but dispute revolves round the calculation or the interpretation. The interpretation made by the petitioner Corporation is rightly not accepted by the Labour Court and the view taken by the Labour Court is fully justified and required to be confirmed on the very fact that on a reference made by the petitioner Corporation to the Government the same interpretation came to be made by the Government. This aspect is also very well manifested from the record of the present case. Next, there was a controversy with regard to the mode of calculation. The petitioner Corporation had referred the matter to the Government. The matter was referred to the Government of Gujarat in Finance Department as the Scheme adopted by the petitioner Corporation was also formulated initially by the Finance Department of the Government of Gujarat by its GR dated 5.7.1991. Thus, the HGS Scheme deals with the problem of stagnation or restricted chances of promotion to the Government employees, the said scheme came to be adopted by the petitioner Corporation and which was opted for by the respondent employee. However, since there was a dispute whether the amount of normal increment should be added in fixing the basic pay for the purpose of higher grade pay scale or not, the matter was referred to the Government and admittedly, the Government of Gujarat has answered the said reference which unfortunately was not brought on record by the petitioner Corporation. The attention of this Court is drawn by the learned Counsel for the respondent employee on the clarification or answer to the said reference or the interpretation, whatever the nomenclature may be attributed to that, but the conclusion is one that the interpretation made by the respondent - employee and accepted by the Labour Court is the same and in the opinion of this Court on correct appraisal and analysis of the facts and circumstances coupled with the underlying design and purpose of the entitlement of the said scheme is fully justified and this court is satisfied that the present petition is merit less and accordingly the petition is rejected with cost. Notice is discharged.

Date: 20.12.1996 (J.N. BHATT, J.)
